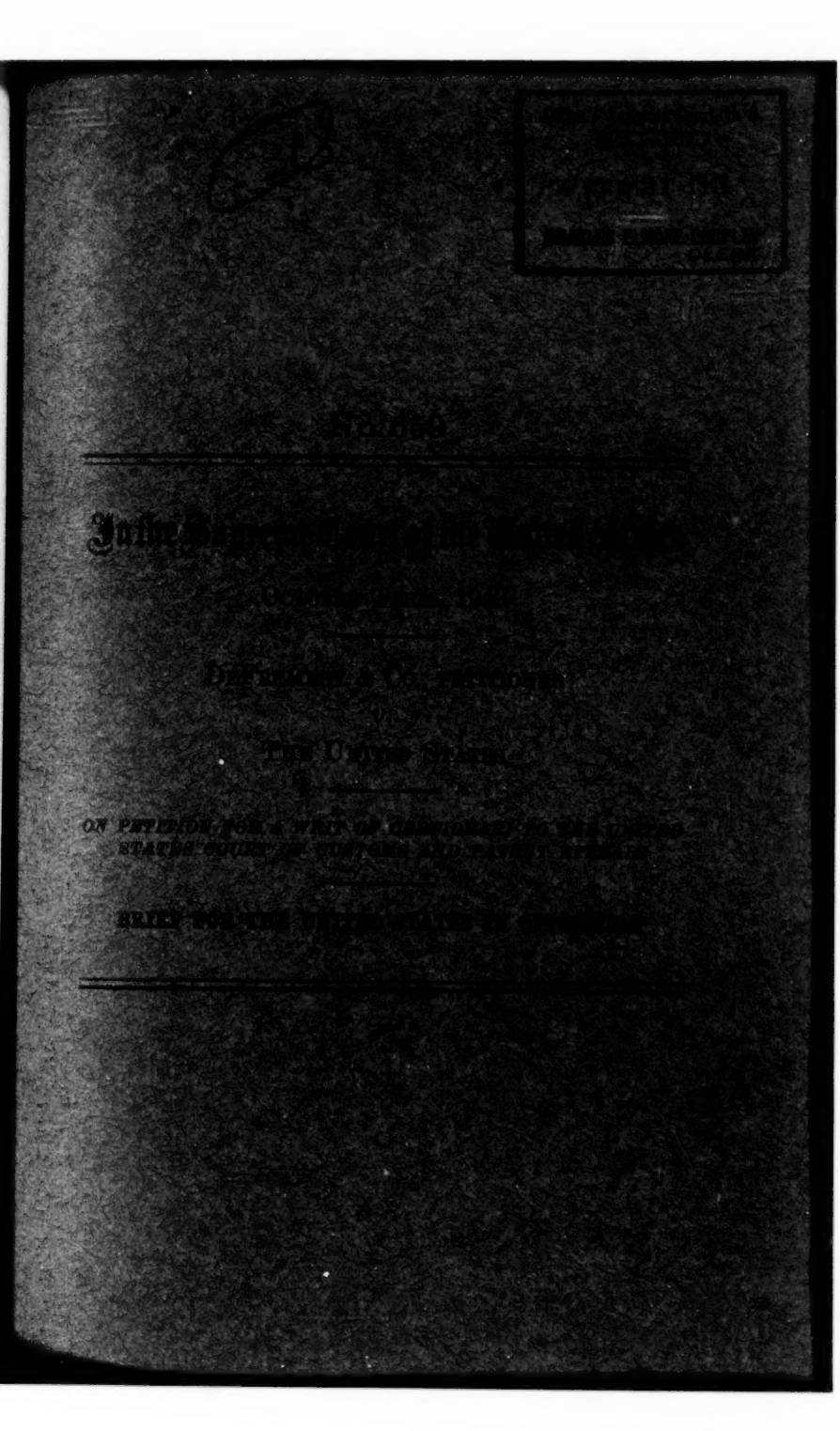

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574363—44

In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 659

DEFREMERY & CO., PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinions of the United States Customs Court are reported in 6 Cust. Ct. 167 and 8 Cust. Ct. 113. The opinion of the United States Court of Customs and Patent Appeals is reported in 138 F. (2d) 161.

JURISDICTION

The judgment of the United States Court of Customs and Patent Appeals was entered on June 10, 1943 (R. 53), and petitioner's petition for rehearing was denied on October 4, 1943 (R. 55). On December 29, 1943, by order of the Chief Jus-

tice, the time for filing the petition for certiorari was extended to February 3, 1944 (R. 56). The jurisdiction of this Court is invoked under Section 195 of the Judicial Code as amended (28 U. S. C. 308).

QUESTION PRESENTED

Whether it was proper for the court below to use the definition of the term "distilled spirits" found in Section 3248 of the Revised Statutes as a basis for its determination that certain imported alcoholic beverages were "distilled spirits" within the meaning of that term as used in Section 600 (a) of the Revenue Act of 1918, as amended.

STATUTES INVOLVED

The relevant provisions of the statutes involved are set forth in the Appendix, *infra,* pp. 11–12.

STATEMENT

In 1937, at the port of San Francisco, California, petitioner imported from France certain quantities of cassis, green menthe, and cherry cordial. These alcoholic beverages were classified for customs duty purposes as cordials under paragraph 802 of the Tariff Act of 1930 (*infra,* p. 12), as modified by the French Trade Agreement, and assessed with duty at $2.50 per gallon.[1] They were also assessed with an internal revenue tax

[1] The French Trade Agreement changed the rate of duty on cordials from $5.00 per gallon to $2.50 per gallon. 53 Stat. 2236, 2274.

of $2.00 per gallon under Section 600 (a) of the Revenue Act of 1918 (*infra,* pp. 11–12), as amended by Section 2 of the Liquor Taxing Act of 1934 (*infra,* p. 12).

Petitioner filed a protest proceeding against the assessment of the customs duties on the cassis, contending that the cassis was not a cordial and not dutiable as such, and against the assessment of the internal revenue taxes on all of the imported beverages, contending, *inter alia,* that they were not "distilled spirits" within the meaning of that term as used in Section 600 (a) of the Revenue Act of 1918, as amended, and not, therefore, taxable under that Section (R. 5, 7).

At the trial of the case, it was shown by evidence that the cassis was made by placing black currants in alcohol for fifty or sixty days and mixing the juice thus obtained with sugar; that the green menthe was made by distilling mint plant mixed with wine alcohol and mixing the middle of the run with sugar syrup; and that the cherry cordial was made by placing fresh cherries in alcohol for about sixty days and mixing the resultant juice with wine alcohol and sugar syrup. It was also shown that the alcoholic content by volume of the beverages was as follows: cassis 15%; green menthe 30%; cherry cordial 32%. (R. 28–29.)

The trial court overruled the protest in all respects upon all of the merchandise (R. 31–37).

Upon appeal, the Court of Customs and Patent Appeals reversed the judgment of the trial court with respect to its holding that the cassis was a cordial for customs duty purposes but sustained the judgment of the trial court with respect to its holding that all of the beverages were "distilled spirits" within the meaning of that term as used in Section 600 (a) of the Revenue Act of 1918, as amended, and taxable thereunder (R. 39–53).[2]

ARGUMENT

Congress, when enacting the Revised Statutes, laid down in Section 3248 thereof a definition[3] clearly intended to govern the use of the term "distilled spirits" in the chapter in which Section 3248 was placed, that chapter encompassing a comprehensive system for the imposition of internal revenue taxes on alcoholic liquors, which system was restricted at that time to alcoholic liquors of domestic production. However, when enacting the

[2] Petitioner has limited the scope of its petition to the question whether the beverages were upon importation taxable as "distilled spirits" under the Revenue Act of 1918, as amended (Pet. 2).

[3] The definition, which was made sufficiently broad to include "dilutions and mixtures," reads:

"Distilled spirits, spirits, alcohol, and alcoholic spirit, within the true intent and meaning of this act, is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation of grain, starch, molasses, or sugar, *including all dilutions and mixtures of this substance*". [Italics supplied.]

Revenue Act of 1918, Section 600 (a) of which was a part of a general system for taxing alcoholic liquors, Congress enlarged the general system for taxing such liquors by imposing the tax on imported liquors as well as on domestic liquors. In the 1918 Act, Congress did not define "distilled spirits."

The court below was of the opinion that the beverages involved were "dilutions and mixtures" of alcohol; that they fell squarely within the definition of "distilled spirits" in Section 3248; and that Congress, when enacting the Revenue Act of 1918, as amended, intended that the definition of "distilled spirits" in Section 3248 should apply to that term as used in the later enactments (R. 45–53) In view of its conclusion, the court found it unnecessary to consider whether the beverages fell within Section 3254 of the Revised Statutes (*infra,* p. 11).

The holding of the court below finds ample support in the decisions of this Court. Section 3248 of the Revised Statutes and Section 600 (a) of the Revenue Act of 1918, as amended, are clearly in *pari materia.* And it has long been established by this Court that two or more Acts of Congress, which form a comprehensive system for raising revenue, are in *pari materia,* and that they are to be read together unless the language used plainly requires otherwise. *Stuart* v. *Maxwell,* 16 How. 150, 160–163; *United States* v. *Jef-*

ferson Electric Co., 291 U. S. 386, 396. Where two Acts are in *pari materia,* and the same word is used in both, and a special meaning is given to the word in the first Act, it will be presumed that it was intended that the word should receive the same interpretation in the later Act, nothing appearing to show a contrary intention. *Reiche* v. *Smythe,* 13 Wall. 162, 165.

The decision in *Stuart* v. *Maxwell, supra,* well illustrates the above principle. That case involved two tariff Acts, one passed in 1842 and the other in 1846. The 1842 Act contained a general provision to the effect that on articles manufactured from two or more materials, the duty should be assessed at the highest rates at which any of its component parts might be chargeable. The 1846 Act imposed a duty of twenty percent on unenumerated articles and a duty of twenty-five percent on manufactures of cotton. The question presented was whether certain unenumerated articles manufactured of cotton and linen should be dutiable at twenty percent as unenumerated articles or at twenty-five percent as manufactures of cotton due to the provision in the 1842 Act that an article should be dutiable at the highest rate applicable to any of its component parts. In holding that the Acts must be read together, the Court said (16 How. at 159, 162):

> The act of 1846 is a revenue law of the United States, and must be construed with

reference to acts in *pari materia,* of which it forms only one part. This observance of a settled principle for the construction of statutes is absolutely necessary in the present state of the legislation of Congress on the subject of revenue. Without it, the public revenue could not be collected, and inextricable embarrassments and difficulties must constantly occur. We are obliged to look at the whole existing system, and consider the nature of the subject-matter of the enactment under consideration, in its relations to that system, in order to pronounce with safety upon its repugnancy to, or consistency with, any particular act of Congress.

* * * * *

* * * when Congress, by the act of 1846, merely changed the rates of duty, without legislating concerning their collection, the laws in force on that subject are to be applied; and this application is not restrained by the fact, that, when reenacted by the act of 1842, they were declared to be so for the purpose of collecting the duties by that act imposed. The new duties merely take the place of the old, and are to be acted on by existing laws as the former duties were acted on; and among these existing laws is *that which affords a rule of denomination, so to speak; which determines under what designation in certain cases a manufacture shall come, and how it shall be ranked;* when this has been

determined, the act of 1846 levies the duty. [Italics supplied.]

Petitioner contends (Pet. 10, 16–17) that since internal revenue taxes were not imposed on imported alcoholic beverages at the time of the enactment of the Act of July 20, 1868 (15 Stat. 126), whence Section 3248 of the Revised Statutes was derived, the definition of the term "distilled spirits" contained in that Section could not have been intended to apply to imported distilled spirits, and that the application of the definition by the court below to the imported beverages gave to the Section a broader scope than it originally possessed and was, therefore, in conflict with the rule of construction that a codified statute is no broader than its antecedent.

It is obvious that the rule contended for by petitioner is inapplicable to this case, for there is nothing in the language of Section 3248 to prevent the application of the definition of distilled spirits contained therein to imported alcoholic beverages. Accordingly, the intention of Congress when it enacted the Revenue Act of 1918 is the important point, rather than its intention when it passed Section 3248 of the Revised Statutes or its antecedent. The two statutes being in *pari materia,* it is proper to read them together as an aid in ascertaining the meaning which Congress intended to give to the term "distilled spirits" which it employed in Section 600 (a) of

the Revenue Act of 1918 and, in this case, to apply that definition of distilled spirits to the imported alcoholic beverages in order to determine their taxability. It will be observed that to construe the term "distilled spirits" in Section 600 (a) otherwise would require that two separate and distinct meanings be given to the same words in the same Section of the statute, one meaning for domestic distilled spirits and another for imported distilled spirits. Thus, the definition in Section 3248 being broader than the common meaning of the term "distilled spirits," some of the imported products would escape taxation entirely, while identical domestic products would be required to bear the tax. To impute to Congress an intention to bring about the above results would seem to be highly improper. The same results would flow from the application of the petitioner's contention that the words "dilutions and mixtures" contained in the definition cover only such dilutions and mixtures as occur in the process of distillation when carried on in this country. Also, as the court below recognized, the opinion in *Jordan* v. *Roche,* 228 U. S. 436, 443–444, clearly indicates that those words should not be given the narrow meaning contended for by the petitioner.

Petitioner's references to the various tariff Acts and cases decided thereunder (Pet. 13, 19, 21–22) to show that Congress has recognized a difference

between cordials and distilled spirits are not in point. In the tariff system, Congress made a distinction between cordials and distilled spirits for classification purposes. In the internal revenue system, it made no such distinction. It is significant, however, that in the tariff system Congress imposed the same rate of duty on both. See Section 802, Tariff Act of 1930 (*infra,* p. 12).

The internal revenue laws of the United States have been enacted into a comprehensive code, in which a definition of the term "distilled spirits" and a provision for taxing imported distilled spirits have been reenacted in the same Act. See Sections 2800 (a) (1) and 2809 (b), Internal Revenue Code (53 Stat. 298, 307). Under the circumstances, the question does not appear to be one likely to call for future consideration.

CONCLUSION

The decision of the court below is clearly correct and presents no question of general importance. There is no conflict of decisions. The petition should be denied.

Respectfully submitted.

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FEBRUARY 1944.